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Paper No. 4

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COPY MAILED

MAY 28 2002

In re Application of
Jeffe, et al.
Application No. 09/998,246
Filed: November 30, 2001

OFFICE OF PETITIONS
ON PETITION

This is in response to the paper styled "REQUEST FOR FILE DATE," filed December 27, 2001. This paper is being treated under 37 CFR 1.10(d), as a petition to accord the above-identified application a filing date of November 29, 2001 instead of the presently accorded filing date of November 30, 2001.

Petitioner requests an earlier filing date on the basis that the application was purportedly deposited in Express Mail service on November 29, 2001, pursuant to the requirements of 37 CFR 1.10, but that the USPS entered an incorrect "date-in" on petitioner's "Express Mail" mailing label.

Paragraph (a) of 37 CFR 1.10 states that:

Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date. See §1.6(a).

(Emphasis supplied). Paragraph (d) of 37 CFR 1.10 states that:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS

or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

A grantable petition under 37 CFR 1.10(d) must include "a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in 'Express Mail Post Office to Addressee' service prior to the last scheduled pickup for that day." In addition, the showing "must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the 'Express Mail Post Office to Addressee' service of the USPS." Evidence from the USPS may be an Express Mail Corporate Account Mailing Statement or a copy of the USPS Track/Confirm system information. Evidence that came into being within one day after the deposit of the correspondence as Express Mail may be in the form of a log book which contains information such as the Express Mail number; the application number, attorney docket number or other such file identification number; the place, date and time of deposit; the time of the last scheduled pick-up for that date and place of deposit; the depositor's initials or signature; and the date and time of entry in the log.

The instant petition lacks sufficient evidence to establish that on the requested filing date, the application was deposited in Express Mail service prior to the last scheduled pickup for that day. Petitioner has provided no corroborative evidence of the deposit. Accordingly, the instant petition is hereby **DISMISSED**.

Any request for reconsideration of this decision should be filed within **TWO MONTHS** of the mailing date of the decision to be considered timely. See, 37 CFR 1.181(f). This time period may **not** be extended under 37 CFR 1.136(a). Further correspondence with respect to this matter should be addressed as follows:

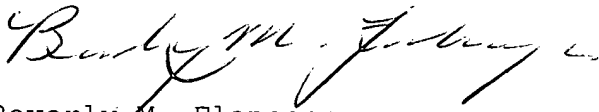
By mail: Commissioner for Patents
Box DAC
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By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
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The application is being returned to Technology Center 2100 for examination in due course.

Telephone inquiries related to this decision may be directed to Petitions Attorney Alesia M. Brown at (703) 305-0310.


Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy